
ENGROSSED SUBSTITUTE SENATE BILL 5285

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Water, Energy & Environment (originally sponsored by Senators Poulsen, Morton, Rockefeller, Honeyford, Kline, Mulliken and Oke)

READ FIRST TIME 02/25/05.

1 AN ACT Relating to updating the water quality joint development act
2 to provide local government flexibility; amending RCW 70.150.040,
3 70.150.070, and 90.48.285; and reenacting and amending RCW 39.10.020
4 and 39.10.902.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 70.150.040 and 1989 c 175 s 136 are each amended to
7 read as follows:

8 The legislative authority of a public body may secure services by
9 means of an agreement with a service provider. Such an agreement may
10 obligate a service provider to perform one or more of the following
11 services: Design, finance, construct, own, operate, or maintain water
12 pollution control facilities by which services are provided to the
13 public body. Service agreements and related agreements under this
14 chapter shall be entered into in accordance with the following
15 procedure:

16 (1) The legislative authority of the public body shall publish
17 notice that it is seeking to secure certain specified services by means
18 of entering into an agreement with a service provider. The notice
19 shall be published in the official newspaper of the public body, or if

1 there is no official newspaper then in a newspaper in general
2 circulation within the boundaries of the public body, at least once
3 each week for two consecutive weeks. The final notice shall appear not
4 less than (~~sixty~~) thirty days before the date for submission of
5 proposals. The notice shall state (a) the nature of the services
6 needed, (b) the location in the public body's offices where the
7 requirements and standards for construction, operation, or maintenance
8 of projects needed as part of the services are available for
9 inspection, and (c) the final date for the submission of proposals.
10 The legislative authority may undertake a prequalification process by
11 the same procedure set forth in this subsection.

12 (2) The request for proposals shall (a) indicate the time and place
13 responses are due, (b) include evaluation criteria to be considered in
14 selecting a service provider, (c) specify minimum requirements or other
15 limitations applying to selection, (d) insofar as practicable, set
16 forth terms and provisions to be included in the service agreement, and
17 (e) require the service provider to demonstrate in its proposal to the
18 public body's satisfaction that (~~a public body's annual costs will be~~
19 ~~lower under its proposal than they would be if the public body~~
20 ~~financed, constructed, owned, operated, and maintained facilities~~
21 ~~required for service~~) it is in the public interest to enter into the
22 service agreement and that the service agreement is financially sound
23 and advantageous to the public body from the standpoint of annual
24 costs, quality of services, experience of the provider, reduction of
25 risk, and other factors.

26 (3) The criteria set forth in the request for proposals shall be
27 those determined to be relevant by the legislative authority of the
28 public body, which may include but shall not be limited to: The
29 respondent's prior experience, including design, construction, or
30 operation of other similar facilities; respondent's management
31 capability, schedule availability, and financial resources; cost of the
32 service; nature of facility design proposed by respondents; system
33 reliability; performance standards required for the facilities;
34 compatibility with existing service facilities operated by the public
35 body or other providers of service to the public body; project
36 performance warranties; penalty and other enforcement provisions;
37 environmental protection measures to be used; and allocation of project
38 risks. The legislative authority (~~shall~~) may designate persons or

1 entities within or outside the public body (a) to assist it in issuing
2 the request for proposals to ensure that proposals will be responsive
3 to its needs, and (b) to assist it in evaluating the proposals
4 received. (~~The designee shall not be a member of the legislative~~
5 ~~authority.~~)

6 (4) After proposals under subsections (1) through (3) of this
7 section have been received, the legislative authority(~~(-s)~~) or its
8 designee shall determine, on the basis of its review of the proposals,
9 whether one or more proposals have been received from respondents which
10 are (a) determined to be qualified to provide the requested services,
11 and (b) responsive to the notice and evaluation criteria, which shall
12 include, but not be limited to, cost of services. These chosen
13 respondents may, at the discretion of the public body, be aggregated
14 into a short list of qualified respondents, who shall be referred to as
15 the selected respondents in this section. The legislative authority or
16 its designee shall conduct a bidder's conference to include all these
17 selected respondents to assure a full understanding of the proposals.
18 The bidder's conference shall (~~also allow the designee to~~) make these
19 selected respondents aware of any changes in the request for proposal.
20 Any information related to revisions in the request for proposal shall
21 be made available to all these selected respondents. Any selected
22 respondent shall be accorded a reasonable opportunity for revision of
23 its proposal prior to commencement of the negotiation provided in
24 subsection (5) of this section, for the purpose of obtaining best and
25 final proposals.

26 (5) After such conference is held, the legislative authority or its
27 designee may negotiate with the selected respondent whose proposal it
28 determines to be the most advantageous to the public body, considering
29 the criteria set forth in the request for proposals. If negotiations
30 are conducted by the designee, the legislative authority shall continue
31 to oversee the negotiations and provide direction to its designee. If
32 the negotiation is unsuccessful, the legislative authority may
33 (~~authorize the designee to~~) commence negotiations with any other
34 selected respondent. On completion of this process, (~~the designee~~
35 ~~shall report to~~) and after the department of ecology review and
36 comments as provided for in subsection (9) of this section, and after
37 public hearing as provided for in subsection (10) of this section, the

1 legislative authority (~~on his or her recommendations and the reasons~~
2 ~~for them~~) may approve a contract with its chosen respondent.

3 (6) Any person aggrieved by the legislative authority's approval of
4 a contract may appeal the determination to an appeals board selected by
5 the public body, which shall consist of not less than three persons
6 determined by the legislative authority to be qualified for such
7 purposes. Such board shall promptly hear and determine whether the
8 public body entered into the agreement in accordance with this chapter
9 and other applicable law. (~~The hearing shall be conducted in the same~~
10 ~~manner as an adjudicative proceeding under chapter 34.05 RCW.~~) The
11 board shall have the power only to affirm or void the agreement.

12 (7) Notwithstanding the foregoing, where contracting for design
13 services by the public body is done separately from contracting for
14 other services permitted under this chapter, the contracting for design
15 (~~of water pollution control facilities~~) services shall be done in
16 accordance with chapter 39.80 RCW.

17 (8) (~~A~~) If a public body elects to enter into an agreement
18 whereby the service provider will own all or a portion of the water
19 pollution control facilities it constructs, the service agreement shall
20 include provision for an option by which a public body may acquire at
21 fair market value facilities dedicated to such service.

22 (9) Before any service agreement is entered into by the public
23 body, it shall be reviewed (~~and approved~~) by the department of
24 ecology to ensure (~~that~~) consistency with the purposes of chapters
25 90.46 and 90.48 RCW (~~are implemented~~).

26 The department of ecology has thirty days from receipt of the
27 proposed service agreement to complete its review and provide the
28 public body with comments. A review under this section is not intended
29 to replace any additional permitting or regulatory reviews and
30 approvals that may be required under other applicable laws.

31 (10) Prior to entering into any service agreement under this
32 chapter, the public body must have made written findings, after holding
33 a public hearing on the proposal, that it is in the public interest to
34 enter into the service agreement and that the service agreement is
35 financially sound and advantageous compared to other methods.

36 (11) Each service agreement shall include project performance bonds
37 or other security by the service provider which in the judgment of the

1 public body is sufficient to secure adequate performance by the service
2 provider.

3 **Sec. 2.** RCW 70.150.070 and 1986 c 244 s 7 are each amended to read
4 as follows:

5 RCW 70.150.030 through 70.150.060 shall be deemed to provide an
6 additional method for the provision of services from and in connection
7 with facilities and shall be regarded as supplemental and additional to
8 powers conferred by other state laws and by federal laws. A public
9 body that is also eligible to enter into agreements with service
10 providers under the alternative public works contracting procedures in
11 chapter 39.10 RCW may elect to use either RCW 39.10.051 and 39.10.061
12 or this chapter as its method of procurement for such services.

13 **Sec. 3.** RCW 39.10.020 and 2003 c 352 s 1, 2003 c 301 s 2, and 2003
14 c 300 s 3 are each reenacted and amended to read as follows:

15 Unless the context clearly requires otherwise, the definitions in
16 this section apply throughout this chapter.

17 (1) "Alternative public works contracting procedure" means the
18 design-build and the general contractor/construction manager
19 contracting procedures authorized in RCW 39.10.051 and 39.10.061,
20 respectively. Public bodies eligible to enter into agreements with
21 service providers for the furnishing of services in connection with
22 water pollution control facilities under the authority of chapter
23 70.150 RCW may elect to use either RCW 39.10.051 and 39.10.061 or
24 chapter 70.150 RCW as their method of procurement for such services.

25 (2) "Public body" means the state department of general
26 administration; the University of Washington; Washington State
27 University; every city with a population greater than seventy thousand
28 and any public authority chartered by such city under RCW 35.21.730
29 through 35.21.755 and specifically authorized as provided in RCW
30 39.10.120(4); every county with a population greater than four hundred
31 fifty thousand; every port district with total revenues greater than
32 fifteen million dollars per year; every public hospital district with
33 total revenues greater than fifteen million dollars per year utilizing
34 the design-build procedure authorized by RCW 39.10.051 and every public
35 hospital district, regardless of total revenues, proposing projects
36 that are considered and approved by the public hospital district

1 project review board under RCW 39.10.117; every public utility district
2 with revenues from energy sales greater than twenty-three million
3 dollars per year; those school districts proposing projects that are
4 considered and approved by the school district project review board
5 under RCW 39.10.115; and the state ferry system.

6 (3) "Public works project" means any work for a public body within
7 the definition of the term public work in RCW 39.04.010.

8 (4) "Job order contract" means a contract between a public body or
9 any school district and a registered or licensed contractor in which
10 the contractor agrees to a fixed period, indefinite quantity delivery
11 order contract which provides for the use of negotiated, definitive
12 work orders for public works as defined in RCW 39.04.010.

13 (5) "Job order contractor" means a registered or licensed
14 contractor awarded a job order contract.

15 (6) "Unit price book" means a book containing specific prices,
16 based on generally accepted industry standards and information, where
17 available, for various items of work to be performed by the job order
18 contractor. The prices may include: All the costs of materials;
19 labor; equipment; overhead, including bonding costs; and profit for
20 performing the items of work. The unit prices for labor must be at the
21 rates in effect at the time the individual work order is issued.

22 (7) "Work order" means an order issued for a definite scope of work
23 to be performed pursuant to a job order contract.

24 **Sec. 4.** RCW 90.48.285 and 1987 c 109 s 144 are each amended to
25 read as follows:

26 The department is authorized to enter into contracts with any
27 municipal or public corporation or political subdivision within the
28 state for the purpose of assisting such agencies to finance the design
29 and construction of water pollution control projects, whether procured
30 through chapter 39.10 or 70.150 RCW, or otherwise, that are necessary
31 to prevent the discharge of untreated or inadequately treated sewage or
32 other waste into the waters of the state, including but not limited to,
33 systems for the control of storm or surface waters which will provide
34 for the removal of waste or polluting materials in a manner conforming
35 to the comprehensive plan of water pollution control and abatement
36 proposed by the agencies and approved by the department. Any such
37 contract may provide for:

1 The payment by the department to a municipal or public corporation
2 or political subdivision on a monthly, quarterly, or annual basis of
3 varying amounts of moneys as advances which shall be repayable by said
4 municipal or public corporation, or political subdivision under
5 conditions determined by the department.

6 Contracts made by the department shall be subject to the following
7 limitations:

8 (1) No contract shall be made unless the department shall find that
9 the project cannot be financed at reasonable cost or within statutory
10 limitations by the borrower without the making of such contract.

11 (2) No contract shall be made with any public or municipal
12 corporation or political subdivision to assist in the financing of any
13 project located within a sewage drainage basin for which the department
14 shall have previously adopted a comprehensive water pollution control
15 and abatement plan unless the project is found by the department to
16 conform with the basin comprehensive plan.

17 (3) The department shall determine the interest rate, not to exceed
18 ten percent per annum, which such advances shall bear.

19 (4) The department shall provide such reasonable terms and
20 conditions of repayment of advances as it may determine.

21 (5) The total outstanding amount which the department may at any
22 time be obligated to pay under all outstanding contracts made pursuant
23 to this section shall not exceed the moneys available for such payment.

24 (6) Municipal or public corporations or political subdivisions
25 shall meet such qualifications and follow such procedures in applying
26 for contract assistance as shall be established by the department.

27 In making such contracts the department shall give priority to
28 projects which will provide relief from actual or potential public
29 health hazards or water pollution conditions and which provide
30 substantial capacity beyond present requirements to meet anticipated
31 future demand.

32 **Sec. 5.** RCW 39.10.902 and 2003 c 301 s 8 and 2003 c 300 s 8 are
33 each reenacted and amended to read as follows:

34 The following acts or parts of acts, as now existing or hereafter
35 amended, are each repealed, effective July 1, 2007:

36 (1) RCW 39.10.010 and 1994 c 132 s 1;

- 1 (2) RCW 39.10.020 and 2005 c ... s 3 (section 3 of this act), 2003
2 c 352 s 1, 2003 c 301 s 2, 2003 c 300 s 3, 2001 c 328 s 1, 2000 c 209
3 s 1, 1997 c 376 s 1, & 1994 c 132 s 2;
4 (3) RCW 39.10.030 and 1997 c 376 s 2 & 1994 c 132 s 3;
5 (4) RCW 39.10.040 and 1994 c 132 s 4;
6 (5) RCW 39.10.051 and 2003 c 352 s 2, 2003 c 300 s 4, 2002 c 46 s
7 1, & 2001 c 328 s 2;
8 (6) RCW 39.10.061 and 2003 c 352 s 3, 2003 c 300 s 5, 2002 c 46 s
9 2, & 2001 c 328 s 3;
10 (7) RCW 39.10.065 and 1997 c 376 s 5;
11 (8) RCW 39.10.067 and 2003 c 301 s 3, 2002 c 46 s 3, & 2000 c 209
12 s 3;
13 (9) RCW 39.10.070 and 1994 c 132 s 7;
14 (10) RCW 39.10.080 and 1994 c 132 s 8;
15 (11) RCW 39.10.090 and 1994 c 132 s 9;
16 (12) RCW 39.10.100 and 1994 c 132 s 10;
17 (13) RCW 39.10.115 and 2001 c 328 s 4 & 2000 c 209 s 4;
18 (14) RCW 39.10.900 and 1994 c 132 s 13;
19 (15) RCW 39.10.901 and 1994 c 132 s 14;
20 (16) RCW 39.10.068 and 2003 c 300 s 6;
21 (17) RCW 39.10.117 and 2003 c 300 s 7; and
22 (18) RCW 39.10.130 and 2003 c 301 s 1.

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